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ARIZONA ATTORNEY GENERAL

March 25, 1954
Letter Opinion
No. 54-80-L

Mr. Daniel T. Benchoff
State Examiner
State Capitol
Phoenix, Arizona

Re: Claim of exemption by guardian
of an incompetent widow.

Dear Mr. Benchoff:

We are in receipt of your recent request for an opinion relating to an exemption claim from taxation made for and on behalf of a widow.

It is well settled in every jurisdiction within the United States that a guardian of an adjudicated mental incompetent has wide power over the property of his ward.

Under the provisions of Section 42-136, A.C.A. 1939, as amended, a guardian appointed by the Court, to care for a mental incompetent, has such powers and duties as are prescribed for the guardian of a minor.

Section 42-113, A.C.A. 1939, relating to the powers of a guardian over a minor reads in part as follows:

"42-113. Powers--Power over property
by appointment only--Survivor.--A guardian
appointed by a court, has power over the
person and property of the ward, unless
otherwise ordered.* * *" (Emphasis
supplied)

Consequently, it may be easily seen that the legislature has delegated the guardian of minors and mental incompetents very broad powers over the property of their wards.

A guardian is bound to manage and conserve the ward's estate in the most advantageous manner. Therefore, it is not

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only the right of a guardian of a mental incompetent to claim an exemption on behalf of his ward, but it is his duty to do so.

Article 9, Section 2, of the Arizona Constitution, specifies that the property of a widow is exempt from taxation under the limitations stated therein. Pursuant to the constitutional provision the legislature enacted Section 73-303, A.C.A. 1939, as amended, prescribing the procedure to be followed for one to claim her exemption. Although this statute requires a person claiming exemption to appear before the County Assessor to execute an affidavit as to his eligibility, the Legislature recognized in the law that there were certain cases where this was impossible, for example, when the claimant is in a hospital, etc.

Nothing is contained in Article 9, Section 2, supra, nor Section 73-303, supra, which would prevent a guardian of a mentally incompetent widow from appearing before an Assessor to claim an exemption on behalf of the widow. This is especially true, in view of the broad powers given guardians over the property of their wards under the statutes above cited and also because of the fact that the widow in such a case is not only mentally incapable of claiming her exemption, but may be physically incapable due to the fact that she is, or may be, confined to a mental institution by court order.

We hope the above information will be of assistance to you.

Yours very truly,

WILLIAM T. BIRMINGHAM
Assistant to the
Attorney General

WTB:bhh